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No. 04-271

Supreme Court, U.S.
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In The
Supreme Court of the United States

SAMUEL KENNETH BEAUMONT,

PETITIONER,

v.

SAMMY CASTATOR AS EXECUTOR OF
THE ESTATE OF EARL WAYNE MEADOWS AND AS HEIR;
AND KATHYRN L. CASTATOR CREASON,
BETTY CARTER MASCHO, ROBERT MEADOWS AND
BILLIE J. CASTATOR MEYER, AS HEIRS,
And Any Other Person Claiming as Heir, Known or Unknown,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS DIVISION I
OF THE STATE OF OKLAHOMA

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Respondents respectfully pray that this Honorable Court deny the Petition for Writ of Certiorari filed herein. Petitioner fails to allege any reason for invoking this Court's certiorari jurisdiction beyond his contention that the Oklahoma Court may recognize a mere rebuttable presumption – a so-called "presumption of gratuity" – against a party who is seeking to prove the existence of an oral contract to devise against the estate of his deceased companion or family member. Petitioner fails to identify any reasons comparable to the reasons set forth in Rule 10 of the Rules of the Supreme Court for the exercise of this Honorable Court's discretionary power. Accordingly, Petitioner's request for a writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Factual Background

Earl Wayne Meadows died in 2000. Most of Meadows' probate estate consisted of eighty acres of real property, which has been in the Meadows family for several generations. A portion of the property was given to Meadows by his parents prior to 1977 and a greater portion was inherited from the estate of Meadow's mother who died in 1995 following the death of Meadows' father.

Meadows had a house constructed on the land, which he financed from a loan from his parents and from a bank loan which he alone signed. Meadows held title to the property in his name alone.

Meadows met Petitioner in 1977 and the two men lived at the same residence from 1977 to the date of Meadows death in 2000.

Meadows had no children and no siblings. Meadows' heirs under Oklahoma law are the lineal descendants of Meadows' grandparents who had in earlier years owned the real property now in Meadows' estate.

After Meadows' death, Petitioner filed a creditor's claim against the estate and the heirs alleging that Meadows had breached an oral contract formed in 1977 to devise all of Meadows' property to Petitioner, including the real property acquired by early gift and later inheritance from Meadows' parents.

At the trial of Petitioner's claim, Petitioner conceded there was never any discussion between himself and Meadows of a contract to devise. Petitioner testified that Meadows had provided financial support to Petitioner and that Petitioner handled household services. Petitioner admitted that the services he performed benefitted himself as much as they benefitted Meadows. Petitioner admitted that the division of labor between himself and Meadows was "natural" and made "unconsciously," and would have occurred irrespective of whether there were any contract. No evidence was introduced that Meadows was gay or that Meadows ever held himself out as being married or that Meadows would have married had Oklahoma law permitted him do so.

Respondents moved for judgment on the ground that evidence presented failed to establish the necessary factual elements of a contract to devise. The Trial Court, after "weighing all evidence admitted at trial," entered judgment for Respondents. See Appendix B to Petition.

On appeal, the Oklahoma Court of Civil Appeals affirmed, finding no evidence of an enforceable oral contract to devise an estate: "The record does not support a conclusion that Petitioner formed his relationship with Meadows for the purpose of someday inheriting all of Meadows property." Appendix A to Petition, page 6a. The opinion of the Court of Civil Appeals does not rest on the application of any rebuttable presumption. There is no mention of a "presumption of gratuity" in the opinion. On June 1, 2004, the Oklahoma Supreme Court denied a Petition for Certiorari filed by Petitioner.

Petitioner filed in the United States Supreme Court a Petition for Writ of Certiorari (hereinafter referred to as the "Petition").

B. Petitioner's Description of the Case Is Not Completely Accurate

Petitioner does not provide a completely accurate description of the proceedings below. Petitioner suggests erroneously that Respondents urged the Trial Court to decide, and that the Trial Court did decide, the case solely on the basis of a presumption and in the absence of factual evidence. In truth, a number of witnesses testified at trial and the Court considered and weighed all of the evidence. The evidence taken as a whole failed to establish any of the elements of a contract to devise an estate. Failure to satisfy the Statute of Frauds was only one of the elements on which Petitioner's proof failed.

Respondents did not urge the application of any evidentiary presumption. To the contrary, after Petitioner raised the issue, Respondents argued as follows:

> I suggest we do not need a presumption of gratuity because the plaintiff has established with his own testimony that he did these things unconsciously, he did these things out of love, not in reference to any contract.

Citing 92 A.L.R.3d 726 (1979), Respondents urged that a reasonable inference that services are gratuitous and not contractual may arise from evidence of a "family" relationship even where the parties are "not related by blood or affinity" and even where the relationship is "strictly platonic."[1] Respondents did not believe and never suggested that the sexual orientation or sexual involvement of Petitioner was a relevant factor. In fact, there was no evidence presented by either side at trial as to Petitioner's sexual orientation or sexual involvement.

There is no indication in the record that the trial court relied on any evidentiary presumption. In light of the evidence actually presented, no presumption was necessary for the Court to conclude that Petitioner's services were not consideration for, or partial performance of, an alleged oral contract to devise.

C. Petitioner's Description of Oklahoma Law Is Not Completely Accurate.

Petitioner states repeatedly and erroneously that the Oklahoma Court, in cases addressing an alleged contract to devise, recognizes a "presumption of *non-gratuity*" for "one who is not related." See, for example, Petition, pages

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[1] J. Draper, *Establishment of 'Family' Relationship to Raise Presumption That Services Were Rendered Gratuitously, as Between Persons Living in Same Household but Not Related by Blood or Affinity*, 92 A.L.R.3d 726 (1979).

4 and 10. Contrary to Petitioner's assertion, there is no indication in any of the Oklahoma cases cited in the Petition that the Oklahoma Court has ever recognized a so-called "presumption of *non-gratuity*" where an oral contract to devise is asserted against a decedent's estate. In every case, the burden of proving all of the elements of a contract to devise rests heavily on the claimant.

Petitioner states erroneously that "there are no Oklahoma cases in which a person who is not related by blood or marriage is denied *any* recovery, until Beaumont." Petition page 10. Petitioner's assertion is contradicted even in one of the Oklahoma cases cited in the Petition. In *Hand v. Warlick*, 31 P.3d 1071 (Okla. App. 2001), cited at Petitioner's footnote 3, where a man and his deceased companion were *unrelated* and *unmarried*, the Oklahoma Court denied a claim of an oral contract to devise, finding that services by the claimant were performed "not because of any feeling of contractual obligation, but from motives of mutual love, affection and helpfulness." *Id.* at 1074 (quoting *York v. York*, 270 P.2d 656 (Okla. 1953), cited at Petitioner's footnote 2).

Petitioner states erroneously that the Oklahoma court "applied the law against Beaumont because he is homosexual." Petition page 10. To the contrary, there is no indication in the record below that sexual orientation was raised, let alone considered by the Court in its decision. Sexual orientation and gender were not relevant factors in any of the Oklahoma cases cited in the Petition. In every case, the Court sought to determine as a matter of fact whether services by the claimant evidenced an oral contract to devise.

REASONS FOR DENYING WRIT

I.

Constitutionality of a Presumption of Gratuity Was Not Properly Raised in the State Court.

> The constitutionality of Oklahoma's laws was not questioned below, nor was Beaumont's sexual orientation the subject of evidence at trial, nor the basis for his claims. "Issues not properly presented to the trial court cannot be considered by this Court on appeal."

Opinion of Oklahoma Court of Civil Appeals, Appendix A, page 9a (citing *Steiger v. City National Bank of Tulsa*, 424 P.2d 69 (Okla. 1967)).

The constitutionality of Oklahoma's laws was not raised in the Trial Court or in the Petition in Error before the Oklahoma Supreme Court or in Appellant's Brief in Chief before the Oklahoma Court of Civil Appeals. The contention that mere recognition of a so-called "presumption of gratuity" violated the Constitution was introduced for the first time in the amicus curiae brief filed by the American Civil Liberties Union of Oklahoma and American Civil Liberties Union (jointly ACLU) *after* Appellant's filing of the Brief in Chief on appeal. The Oklahoma Court, under established procedure, declined to address the ACLU's issue on appeal, because the issue had not been properly presented to the Trial Court and preserved for appeal.[2] Now, Petitioner is attempting to attract the

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[2] ACLU's attempt, as amicus curiae, to inject issues of constitutionality into the appeal was rejected by the Oklahoma Court under established Oklahoma procedure. Oklahoma Supreme Court Rule 1.12 ("brief of an amicus curiae . . . is confined to the issues raised by the parties"); *City of Oklahoma City v. State ex rel. Okla. Dep't. of Labor*,

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attention of this Honorable Court in respect of an issue not properly raised below. For that reason alone, certiorari should be denied. *Adams v. Robertson*, 520 U.S. 83, 87-88 (1997) (dismissing writ of certiorari as improvidently granted where Petitioner failed to demonstrate compliance with applicable state rules for raising federal due process claim).

II.

A "Presumption of Gratuity" Was Not Prejudicial to Petitioner.

The premise of Petitioner's equal protection argument is that the application of a so-called "presumption of gratuity" deprived him of what would otherwise have been an enforceable contract to devise. For the following reasons, Petitioner's premise cannot be accepted.

A. A So-called "Presumption of Gratuity" Is Not a True Evidentiary Presumption or Substantive Rule of Law in Oklahoma.

Oklahoma does not recognize a presumption of gratuity as an evidentiary presumption or as a substantive rule of law.[3] The Oklahoma Court, in *York v. York*, 270 P.2d 656

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918 P.2d 26, 32, n.4 (Okla. 1995) (Amici curiae's participation must stand confined to issues raised in the trial tribunal and preserved for appellate review); *Morland Dev. Co. v. City of Tulsa*, 596 P.2d 1255, 1258 (Okla. 1979) ("Amici Curiae must accept the issues as made and cannot raise constitutional questions not presented by the litigants").

[3] The word "presumption" has been used in a variety of ways: referring to permissible inferences (e.g., presumption against spoliators of evidence), rules for allocating the burden of proof (e.g., presumption of innocence), and conclusive presumptions which are really rules of

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(Okla. 1953), observed that conduct reasonably explained without reference to an alleged oral contract to devise cannot constitute part performance to avoid the statute of frauds unless "it should appear with reasonable certainty that the services would not have been performed but for the oral agreement." *Id.* at 659. The Court then stated:

> The *facts* concerning this relationship strongly induce the *belief*, often referred to as a 'presumption' in the case of close relatives, that such services were furnished gratuitously and more because of mutual love, affection, esteem, high regard, gratitude, and/or hope of some future but undetermined reward, than in performance of the claimed contract.

Id. at 660 (emphasis added). It is obvious from this passing mention of "a presumption" that the Oklahoma Court was not referring to a substantive rule of law or even to a true evidentiary presumption. Instead, the Court merely acknowledged a commonly held "belief" – at most, a permissible inference the trier of fact may draw from the evidence. The decision in *York* merely reflects the facts proven at trial and is not dependent upon the application of any evidentiary presumption.

In the present case, Petitioner was permitted to present to the trier of fact any admissible evidence probative of the elements of an oral contract to devise. The presentation of evidence was completely unfettered by any

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substantive law (e.g., in a products liability case a manufacturer is presumed to know the defects in his own products). 21 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 5124 (West 2004).

presumption. The Court considered all of the evidence and determined that the requisite elements of an enforceable oral contract to devise were not proven. Petitioner's claim failed, not because of any evidentiary presumption, but because there was no evidence of a contract to devise.

B. A "Presumption of Gratuity" Would Not Shift the Burden of Proof.

The effect of a true rebuttable evidentiary presumption under Oklahoma law is to shift the burden of proof from one party to another. OKLA. STAT. tit. 12, § 2303. Any presumption that would "shift" the burden of proof to a party who already has the burden of proof even without the presumption cannot prejudice that party.[4] Because Petitioner already had the burden of proving the elements of a contract to devise and exception to the Statute of Frauds, the invoking of a so-called "presumption of gratuity" would not "shift" the burden. For example, in *Kurn v. Thompson*, 105 P.2d 422 (Okla. 1940), where the defendant railroad raised the affirmative defense of contributory negligence, the erroneous jury instruction that "it must be presumed the deceased looked and listened before driving onto the tracks, unless there is evidence to the contrary" was merely harmless error, inasmuch as the defendant already had the burden of proving affirmatively that the deceased was contributorily negligent, that is, did not look and listen. As in the present case, the burden of proof would be the same even in absence of the purported presumption.

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[4] There can be no deprivation of equal protection where there is no harm. *Wilson v. Minor*, 220 F.3d 1297, 1312 (11th Cir. 2000) (rejecting equal protection claim where plaintiff failed to "articulate any cognizable theory of harm under equal protection . . . jurisprudence.")

C. The Introduction of Direct Evidence That Services Were Gratuitous and Not Contractual Caused Any Evidentiary Presumption to Disappear.

Where a rebuttable presumption is applied to shift the burden of proof, any evidence of the non-existence of the presumed fact causes the presumption to disappear and "the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case."[5] In the present case, the *fact* that Petitioner's services were gratuitous and not contractual was proven by direct evidence.[6] Thus, even if the "presumption of gratuity" were a true evidentiary presumption (which it is not) and even if it had shifted the burden of proof (which it did not), the admission of direct evidence dispelled the presumption, eliminating any possible prejudice. See *Mobile, Jackson & K.C. R.R. Co. v. Turnipseed*, 219 U.S. 35 (1910).

In any event, the mere application of a rebuttable presumption as a rule of evidence, and not as a conclusive rule of substantive law, could not violate the equal protection clause of the Constitution. *Id.* 219 U.S. at 43 ("The statute does not, therefore, deny the equal protection of the

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[5] OKLA. STAT. tit. 12, § 2303(2).

[6] Petitioner merely kept doing the same household chores in the same place in the same way he had been doing before the alleged contract and described the division of labor between himself and Meadows as having been made "unconsciously." Petitioner admitted that his household chores benefitted himself as much or more than they did the Deceased and admitted that he would have performed the chores irrespective of whether there were any contract. The only disinterested witness called to testify at trial contradicted Petitioner's testimony about an alleged contract to devise. Tr. 124-27.

law or otherwise fail in due process of law, because it creates a presumption of liability, since its operation is only to supply an inference of liability in the absence of other evidence contradicting such inference"); *Salsburg v. Maryland*, 346 U.S. 545, 550 (1954) ("Rules of evidence, being procedural in their nature, are peculiarly discretionary with the law-making authority, one of whose primary responsibilities is to prescribe procedures for enforcing its laws").

III.

The Change in Oklahoma Law Urged by Petitioner Would Contravene the Fundamental Precept of Neutrality of the Law.

Petitioner would make a unique rule of law based solely on sexual orientation that would contravene the fundamental precept of neutrality of the law. *Romer v. Evans*, 517 U.S. 620, 623 (1995) ("The Constitution enforces a commitment to the law's neutrality where the rights of persons are at stake."). Petitioner would have the Court overrule the will of the Oklahoma legislature by imposing judicial rules that would make an unmarried man the *sole beneficiary* of the intestate estate of his gay companion to the complete exclusion of all those whom the legislature has identified as the lawful heirs. The issue of whether in a particular instance the lawful heirs of an intestate decedent would be divested, would turn on the posthumous determination by the Court as to whether or not the decedent was "gay." By what proof would the Court distinguish between a gay and a non-gay decedent? Would the Court-imposed "contract" to devise cover separately acquired or inherited property such as was received by Meadows from his parents? Would the Court-imposed "contract" divest the lawful heirs of 100% of the decedent's estate or of some lesser portion? Would a beneficiary of the

Court-imposed "contract" to devise fare better than would a surviving spouse of a lawfully married decedent who died intestate?

Under the law of Oklahoma, a gay person in Oklahoma contemplating death and wishing to leave property to a friend or companion has the same legal options as does an unmarried heterosexual person. A gay person seeking to prove an oral contract to devise against the estate of a decedent has the same burden of proof as does a heterosexual person.

CONCLUSION

An alleged oral contract "to distribute the estate of a deceased person in a different way from that provided by law, should be looked upon skeptically and the evidence to establish it weighed in the most scrupulous manner." *York*, 270 P.2d at 658. Under Oklahoma law, any person who establishes clear proof of an oral contract to devise may obtain recovery against a decedent's estate. No presumption is recognized that would relieve any claimant of the burden of proving all elements of the cause of action. In the present case, Petitioner has been afforded equal protection under the law. With all due respect, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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